IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 159

FREDERICK C. LYNCH,

Petitioner,

v.

WINFRED OVERHOLSER,

Respondent.

REPLY BRIEF FOR THE PETITIONER

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INDEX

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

CASES:

MISCELLANEOUS:

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I.

The proliferation of arguments by respondent and *amicus* obscures the central issue of this case. This issue requires succinct restatement in reply:

May the prosecution, in a system of adversarial justice, prevent a competent defendant from waiving any defense available to him and *compel* him to assert a defense of *its* choosing *to his disadvantage?*

Petitioner's position is aptly summarized in the opinion by Judge Holtzoff in a case substantially indistinguishable from the one at bar:

> "The Court is of the opinion that it is a deprivation of a constitutional right to force any defense on a defendant in a criminal case or to compel any defendant in a criminal case to present a particular defense which

he does not desire to advance. This principle of law is accentuated when the successful advancement of the particular defense must end in disaster, because a person who successfully pleads insanity must be committed to a mental institution." *Tremblay* v. *Overholser,* D.C., D.C., Habeas Corpus Action 288-61, —— F. Supp. —— (1961).

Nothing in respondent's brief justifies rejection of this view.

II.

The consequences of the extraordinary and unprecedented action by the Municipal Court, set forth in petitioner's principal brief (Br., pp. 16-23, 31-32, 49-50), have been highlighted by recent developments in this Circuit.

The attention of this Court is invited to another shocking example of the transformation of psychiatry into an instrumentality of oppression in the service of the Government under the *Lynch* doctrine of the Court of Appeals. In January of 1961, a "lady of refinement and education" was denied the right to plead guilty to a charge of public intoxication and was forced to submit to an insanity defense. Acquitted by reason of insanity over her objection, upon the basis of testimony that her drinking was the product of an anxiety neurosis, she was forthwith committed to Saint Elizabeth's Hospital for an indefinite period capable of extending for the rest of her natural life. These facts emerged in the course of a *habeas corpus* action in December of 1961. In the words of the District Court in *Tremblay* v. *Overholser,* Habeas Corpus No. 288-61, D.C. D.C., —— F. Supp. —— (1961), on December 8, 1961:

> "Neither she nor her counsel raised the issue of insanity, neither she nor her counsel introduced any

> evidence bearing on the issue of insanity, and no motion or request was made in her behalf for a finding of not guilty on the ground of insanity. However, the presiding Judge, on the basis of the report of the D.C. General Hospital, . . . found the petitioner not guilty on the ground of insanity. The appropriate statute of the District of Columbia makes it mandatory on the Court, when a person is acquitted on a criminal charge on the ground of insanity, to commit such person to St. Elizabeth's Hospital, and accordingly she was forthwith so committed. This took place on January 3, 1961. Petitioner has been an inmate of that hospital ever since, to this date."

Commenting upon these facts, the District Court found that whether or not the petitioner needed hospitalization, she "should not be among insane people," which was precisely where she was confined at Saint Elizabeth's Hospital, as a result of the "benign" working of the insanity defense in Municipal Court.

The District Court concluded:

> "... There was a time when insane people were placed in jails, temporarily, at least. We looked upon this as a barbaric custom that has been pretty well eliminated. But we have reverted to it in reverse, we are placing sane people in insane institutions, which I think is even more barbaric. . . . "

Holding that it was a deprivation of a constitutional right to force the insanity defense upon a recalcitrant and competent defendant, the District Court granted the petition for *habeas corpus*, sustained the writ and ordered the petitioner to be released.

Respondent moved for summary reversal of the District Court order and the Court of Appeals, without affording

the petitioner an opportunity of submitting briefs or memoranda in opposition, vacated the District Court order within twenty-four hours of an "emergency" hearing in the Court of Appeals—apparently upon the strength of the *Lynch* doctrine here under scrutiny. See *Overholser* v. *Tremblay*, No. 16,778 (D.C. Cir. 1961).[1]

III.

Respondent's brief confuses the existing state of legal doctrine in England and Scotland vis-a-vis the forcible imposition of the insanity defense.

It can be unequivocally asserted that English law is precisely as expressed by *Rex* v. *Oliver*, 6 Cr. App. 19, at 20 (1910). (See Br., p. 36.) Moreover, English practice has at no time, at least since 1910, deviated from the norm established by *Rex* v. *Oliver*, *supra*.

The Royal Commission in its Report on Capital Punishment noted, in commenting upon existing English practice, the oppressive results of any invocation of the insanity defense by anyone other than the defendant. It noted that a defendant who was attempting to set up a defense such as provocation would be seriously and unfairly prejudiced if the prosecution were to be allowed to present evidence as to the defendant's insanity.[2] See ROYAL COMMISSION ON CAPITAL PUNISHMENT, REPORT, §§ 448, 454 (1953).

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[1] The arbitrary and irrational application of criminal commitment law to effect the confinement of a criminal defendant in the mental ward of a public hospital is encountered even in the context of traffic violations in the District of Columbia. See, e.g., *Susie V. Watwood* v. *Mary McIndoo*, H.C. 243-60 (D.C., D.C. 1960).

[2] Glanwill Williams cannot be cited as favoring the respondent's position. (See Respondent's Br., p. 39, fn. 25.) Essentially, Glanwill Williams was addressing himself primarily to the situation in which the defense claimed diminished responsibility and in which the Crown was therefore entitled to regard sanity as

In considering possible objections to the practice exemplified by *Rex* v. *Oliver*, *supra*, the Royal Commission concluded:

> "... [T]here are not sufficient grounds to justify us in recommending such a fundamental change in English judicial procedure. Cases in which an insane prisoner declines to plead insanity, and those in which the defence may be embarrassed by pleading simultaneously both insanity and another defence, are not likely together to amount to more than one or two a year. It it a fundamental principle of criminal jurisprudence that a long established procedure should not be altered unless there are very strong reasons for doing so, and in this matter the proposed remedy would be altogether disproportionate to the mischief it is designed to cure. . . . [I]t would [therefore] not be desirable to give the prosecution power to raise the issue of insanity against the wishes of the defence." *Id.*, §§ 453-454.[3]

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being an issue. Here, too, the context of the discussion appears essentially that of capital crime. It is noteworthy, moreover, that Glanwill Williams insisted that if the prosecution were to be allowed such initiative, the burden of proving insanity, in contrast to the *Lynch* doctrine, had to rest squarely upon the prosecution to the point of adducing "such serious evidence of insanity as . . . [to justify] the use of what is in effect a power of compulsory commitment . . ." WILLIAMS, CRIMINAL LAW: THE GENERAL PART, § 176 (1961). This is a far cry from what is advocated by respondent in the case at bar.

[3] Addressing itself entirely to the subject of capital crime, the Royal Commission did recommend granting the power of invoking the insanity defense to the judge, as distinct from the prosecution. ROYAL COMMISSION ON CAPITAL PUNISHMENT, REPORT, § 454.

The results of an enforced insanity defense, however, would be far less oppressive under English than American law. English law puts the burden of establishing the insanity defense squarely upon the proponent thereof. *Bratty* v. *Attorney General for Northern Ireland*, 3 Wkly. L. Rev. 965 (1961).

Scottish law, following the Civil Law tradition, does indeed grant authority to the prosecution as well as the court to present evidence concerning the mental condition of a person charged with crime. Significantly, this authority is invoked primarily in the investigation of mental competency to stand trial.

There is no extant case in Scotland in which an insanity defense has been forced upon a recalcitrant and competent defendant. Asked whether Scottish law permits the forcible imposition of the insanity defense on an accused person, Mr. Robert MacDonald, Procurator Fiscal of Scotland, in a letter addressed to the Secretary of the Law Society of Scotland for transmission to petitioner's counsel, replied as follows on December 28, 1961:

> "It would not in my view be proper to assume that our law permits 'the forcible imposition of the insanity defence' on the accused person. The position is rather that the prosecution brings to the Court's notice the fact that the accused is probably unable to instruct his defence on account of his insanity and leaves it to the Court to decide the procedure to be adopted.
>
> "The Court's decision, I am satisfied, is dictated in all cases by what is likely to be of maximum fairness to the accused person."[*]

In a formal *opinion of counsel*, dated December 28, 1961, Mr. Nicholas Fairbairn, advocate in Edinburgh, Scotland, declared as follows:

> "It is extremely rare for the Crown to attempt to establish a plea of insanity in bar of trial without the

[*] Members of the Scottish bar, engaged in criminal practice, consulted by petitioner's counsel in this matter, uniformly rejected the suggestion that Scottish law could be interpreted as supportive of the respondent's position in the case at bar.

concurrence of the defence, and unknown in a summary charge—only in one or two exceptional cases of gravity, and then usually only where the accused is unrepresented. It is unknown for the Crown to attempt to establish insanity at the time of the commission of the offence without a plea of insanity in bar of trial, e.g., if a man went to trial and the Crown or Court accepted that he was fit to plead, *only the Defence could and would attempt to have him found insane at the time of the commission of the offence.*" [4a]

IV.

Respondent asserts that only minimal procedural safeguards are required in proceedings resulting in commitment for care and treatment as distinct from punishment. The suggestion is implicit that attachment of the words "care and treatment" to a given mode of confinement is, without more, determinative of the scope of necessary procedural safeguards.

The mechanistic interpretation of respondent would permit the transformation of a prison into a hospital by the painting of the legend "hospital" upon the guarded portals of the penitentiary.

This Court has never hesitated to pierce the veil of nomenclature to give clear and realistic assessment to the nature of the deprivation which was in fact as well as in name imposed upon a citizen and to provide for procedural safeguards commensurate with the magnitude of the deprivation.

[4a] This opinion was transmitted to petitioner's counsel. The confusing character of respondent's contentions concerning Scottish law and the dearth of appellate case law on the subject prompted contact with leading members of the Scottish bar for appropriate opinions, of which this is a characteristic sample.

The trend of decision has been clearly one of refusing to regard official nomenclature as controlling. The terms "civil" and "criminal" have thus long lost the magic of compelling any specific procedural results. What determines the scope of procedural protection, instead, is the nature of the deprivation itself, regardless of nomenclature. Conceptions of due process, determinative of procedural fairness, have thus been geared to the specific nature of a given deprivation, irrespective of its name. The trend of decision is easily demonstrable. In 1896 this Court held deportation under the Chinese Exclusion laws to be a civil matter, non-punitive in character, and hence devoid of the necessity of significant procedural safeguards. See *Wong Wing* v. *United States*, 163 U.S. 228 (1896). In 1945, deportation was viewed in a more advanced and realistic light. The terms "civil" and "non-punitive" in no way blinded this Court to the realization that a deportation proceeding involved a deprivation of uttermost consequence, transcending in significance the imposition of a fine and the infliction of even a long term of imprisonment. As aptly stated by Mr. Justice Douglas in *Bridges* v. *Wixon*, 326 U.S. 135, 147 (1945), deportation comports a deprivation so severe as to "result in the loss of all that makes life worth living." This Court concluded that the infliction of such a deprivation required safeguards commensurate with its magnitude, i.e., that "[m]eticulous care must be exercised lest the procedure not meet the essential standards of fairness." *Id.*, at 154.[5]

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[5] To call a deprivation "therapeutic" in no way lessens its deprivational effect without more.

Hence, so-called medical measures like sterilization have nonetheless been deemed to require a hearing meeting meticulous standards of due process of law. See, e.g., *In re Hendrickson*, 12 Wash. 2d 600, 123 P. 2d 322 (1942); *Buck* v. *Bell*, 274 U.S. 200, 206-207 (1927).

The enormity of the deprivation inflicted upon a citizen through commitment to the existing mental hospital system has been adequately set forth before (see Br., pp. 18-23) and requires no restatement.*

Conclusion

By reason of the foregoing the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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Dated: January 5, 1962

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* It is ironic that after championing the position of the Court of Appeals for the D.C. Circuit as a near legislative chamber, respondent relies on *Overholser* v. *O'Beirne*, —— F. 2d —— (D.C. Cir. 1961) (Respondent's Br., p. 49), in which the Court of Appeals declared that the adequacy or inadequacy of treatment facilities at Saint Elizabeth's Hospital was of no concern to it and that such considerations as that the therapeutic facilities at Saint Elizabeth's Hospital might be worse than those of a federal prison were "the business of the legislative, not the judicial branch of government . . ." *Id.*, Slip Sheet Opinion, p. 4.

If this view were sustained by this Court, indefinite imprisonment at Saint Elizabeth's Hospital by judicial fiat may be substituted for a definite term of imprisonment under conventional penal law—significantly without securing to the beneficiary of this revolutionary innovation the elementary treatment facilities which alone could be deemed to justify a departure from conventional practice in reason or fairness.